

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL BOBOWSKI, ALYSON BURN,
STEVEN COCKAYNE, BRIAN CRAWFORD,
DAN DAZELL, ANGELO DENNINGS,
CHEYENNE FEGAN, SHARON FLOYD,
GREGORY GUERRIER, JOHANNA
KOSKINEN, ELENA MUNOZ-ALAZAZI,
ELAINE POWELL, ROBERT PRIOR, ALIA
TSANG, and KYLE WILLIAMS, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

CLEARWIRE CORPORATION,

Defendant.

Case No. C10-1859-JLR

**PLAINTIFFS' MOTION TO HOLD
OBJECTORS IN CONTEMPT FOR
IGNORING COURT'S ORDER TO
POST APPEAL BOND**

NOTE ON MOTION CALENDAR:
Friday, May 24, 2013

1 Plaintiffs move the Court to hold objectors Mr. Morgan and Mr. De La Garza in civil
 2 contempt for utterly ignoring this Court's order dated March 11, 2013 in which the Court ordered
 3 them "to either (1) post a bond in the amount of \$41,150.00 or (2) dismiss their notice of
 4 appeal." Order at 5:10-11 (Dkt. 117). Plaintiffs submit that an appropriate sanction is to strike
 5 from the record the objectors' objection to the settlement and dismiss their notice of appeal; and
 6 to so inform the Ninth Circuit.

7 Enforcement of this Court's March 11, 2013 bond order is appropriate now because, as of
 8 this week, the objectors took further action in the Ninth Circuit without first posting the required
 9 bond. As background, on February 26, 2013, plaintiffs-appellees moved the Ninth Circuit for
 10 summary affirmance. On April 22, 2013 (after this Court's March 11, 2013 bond order), the
 11 Ninth Circuit granted summary affirmance, determining that "the questions raised in this appeal
 12 are so insubstantial as not to require further argument." (*See* Dkt. 126).

13 The Ninth Circuit's order granting summary affirmance might have mooted the need for
 14 an appeal bond but, on Monday, May 6, 2013, the objectors filed a motion in the Ninth Circuit
 15 requesting a rehearing. *See* Cantor Decl. ¶ 3 (May 9, 2013). By instigating further proceedings
 16 in the Ninth Circuit, the objectors are flaunting this Court's March 11, 2013 bond order and
 17 should be held in contempt.

18 This will not be the first time that a district court in the Ninth Circuit has had to
 19 find objectors in contempt for exactly the same reason:

20 On July 31, 2012, the Court issued an order requiring Objector Bandas to either:
 21 (1) post an appellate bond in the amount of \$70,650; or (2) file a notice of
 22 dismissal of his appeal. ...

23 On August 27, 2012, in accordance with the Court's August 22 Order, Plaintiff
 24 filed the present Motion, on the grounds that Objector Bandas had neither posted
 the required appellate bond nor dismissed his appeal.

25 ...

26 Upon review, the Court finds that Objector Bandas' failure to comply with the
 27 Court's July 31 Order and August 22 Order warrants a finding that Objector is in

contempt, and imposes the sanction of striking Objector's objection to the Final Settlement. Accordingly, the Court ORDERS Objector's Objection STRICKEN, which means that the Objection has no force or effect on the Final Settlement. ...

The Clerk of Court shall send a copy of this Order to the Ninth Circuit, where Objector's appeal is pending.

Embry v. ACER Amer. Corp., No. C09-1808, 2012 WL 3777163, *2 (N.D. Cal. Aug. 29, 2012).

Courts have held other objectors in contempt for the same reason. *E.g.*, *In re Magsafe Apple Power Adapter Litig.*, No. C09-1911, 2012 WL 3686783, * (N.D. Cal. Aug. 22, 2012) ("the Court finds that Objector's failure to comply with the Court's May 29 [bond] Order warrants a finding that Objector is in contempt, and imposes the sanction of striking Objector's objection to the Final Settlement").

The Court's March 11, 2013 bond order was not optional. On the contrary, it imposed a crystal-clear requirement that the objectors either post a bond or dismiss their notice of appeal. The Court should not permit the objectors to flaunt that order so blatantly, including by submitting further briefing to the Ninth Circuit, which may delay a final resolution of the case and may also increase costs (*see e.g.*, Dkt. 107 at 7-9), while refusing to post the bond.

For these reasons, plaintiffs respectfully request that this Court hold Mr. Morgan and Mr. De La Garza in civil contempt and impose a sanction of striking from the record their objection to the settlement, dismissing their notice of appeal, and so informing the Ninth Circuit; and impose any other sanction the Court deems appropriate under the circumstances.

Dated: May 9, 2013

Respectfully submitted,

By: s/ Cliff Cantor

Cliff Cantor, WSBA # 17893

LAW OFFICES OF CLIFFORD A. CANTOR, P.C.

627 208th Ave. SE

Sammamish, WA 98074

Tel: (425) 868-7813

Fax: (425) 732-3752

Email: cliff.cantor@comcast.net

MILBERG LLP
Josh Keller
One Penn Plaza
New York, NY 10119
Tel: (212) 594-5300
Fax: (212) 868-1229
Email: jkeller@milberg.com

REESE RICHMAN LLP
Kim E. Richman
875 Ave. of the Americas, 18th Fl.
New York, NY 10001
Tel: (212) 579-4625
Fax: (212) 253-4272
Email: krichman@reeserichman.com

Counsel for plaintiffs in *Dennings*¹

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PETERSON WAMPOLD ROSATO
LUNA KNOPP
Felix Gavi Luna
1501 Fourth Ave., Ste. 2800
Seattle, WA 98101
Tel: (206) 624-6800
Fax: (206) 682-1415
Email: luna@pypfirm.com

TYCKO & ZAVAREEI LLP
Jonathan K. Tycko
2000 L St., N.W. Ste. 808
Washington, D.C. 20036
Tel: (202) 973-0900
Fax: (202) 973-0950
Email: jtycko@tzlegal.com

Counsel for plaintiffs in *Minnick*

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¹ In this context, the phrase “plaintiffs in *Dennings*” does not include Mr. Prior, whom counsel do not represent.

AUDET & PARTNERS, LLP
Michael McShane
221 Main St., Ste. 1460
San Francisco, CA 94105
Tel: (415) 568-2555
Fax: (415) 568.2556
Email: mmcshane@audetlaw.com

BAILLON THOME JOZWIAK & WANTA LLP
Shawn J. Wanta
222 S. Ninth St., Ste. 2955
Minneapolis, MN 55402
Tel: (612) 252-3570
Fax: (612) 252-3571
Email: swanta@baillonhome.com

Counsel for plaintiffs in *Newton*

Class Counsel

Certificate of Service

I certify that, on the date stamped above, I caused the foregoing, together with a proposed order and the declaration of Cliff Cantor, to be (i) filed with the clerk of the court via the CM/ECF system, which will send notification of filing to all counsel of record; and (ii) deposited in the U.S. mail, postage prepaid, addressed to Robert Prior, 2016 E. 6th St., Vancouver WA 98661.

s/ Cliff Cantor
Cliff Cantor, WSBA # 17893